

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SEDALIA BENTON,

No. C 15-03500 JSW

Plaintiff,

v.

REAL ESTATE FINANCIAL SERVICES,  
INC., ET AL.,

Defendant.

**ORDER (1) DENYING PLAINTIFF'S  
APPLICATION FOR TEMPORARY  
RESTRAINING ORDER; (2) DENYING  
PLAINTIFF'S APPLICATION TO  
PROCEED IN FORMA PAUPERIS; AND  
(3) DISMISSING COMPLAINT**

Now before the Court is the application for a temporary restraining order (“TRO”) and application to proceed *in forma pauperis* filed by plaintiff Sedalia Benton (“Plaintiff”), who is proceeding pro se. Having carefully reviewed Plaintiff’s papers and considered her arguments and the relevant legal authority, and good cause appearing, the Court hereby DENIES Plaintiff’s application for a TRO, DENIES her application to proceed *in forma pauperis* and DISMISSES the action with leave to amend.

A district court may deny in forma pauperis status and sua sponte dismiss an action under certain circumstances, including when the underlying complaint sought to be filed is frivolous or when it fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2); *see also Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995). In contravention of Federal Rule of Civil Procedure 8(a), Plaintiff has failed to file a pleading setting forth the grounds upon which this Court has jurisdiction, “a short and plain statement of the claim showing that the pleader is entitled to relief, ... and a demand for judgment for the relief the pleader seeks.”

1 Plaintiff alleges that she purchased the property located at 5804 E. 16th Street in Oakland,  
2 California (the "Property") and obtained a mortgage loan for the purchase on June 30, 2006. (Mot.  
3 at 3.) She further alleges that the mortgage loan was modified on September 3, 2009 and that a  
4 notice of default was filed on November 25, 2009. (*Id.*) Plaintiff does not allege whether a notice of  
5 trustee's sale has been scheduled. Nor it is clear whether Plaintiff defaulted on the modified loan  
6 and/or whether she applied for another loan modification after September 3, 2009. If she did apply  
7 for another loan modification, she does not allege when she did so. Plaintiff does not allege what  
8 the alleged misconduct is by the defendants or what claim or claims she seeks to bring. In the  
9 absence of such allegations, Plaintiff fails to state a claim.

10 Accordingly, Plaintiff's application to proceed *in forma pauperis* is HEREBY DENIED and  
11 the Complaint is DISMISSED WITH LEAVE TO AMEND. If Plaintiff wishes to pursue this  
12 action, she must file an amended complaint setting forth a cognizable legal claim and some factual  
13 basis to support a claim with federal jurisdiction by **August 28, 2015**. Plaintiff may file a renewed  
14 application to proceed *in forma pauperis* upon filing an amended complaint. Failure to file timely  
15 an amended complaint shall result in dismissal of this action without prejudice.

16 The Court FURTHER ORDERS that Plaintiff's application for a TRO is DENIED. In order  
17 to obtain a temporary restraining order or preliminary injunctive relief, Plaintiff "must establish that  
18 she is likely to succeed on the merits, that she is likely to suffer irreparable harm in the absence of  
19 preliminary relief, that the balance of equities tips in her favor, and that an injunction is in the public  
20 interest." *Winter v. Natural Resources Defense Council*, 555 U.S. 7, 129 S. Ct. 365, 374 (2008)  
21 (citations omitted). The *Winter* court also noted that because injunctive relief is "an extraordinary  
22 remedy," it "may only be awarded upon a clear showing that the plaintiff is entitled to such relief."  
23 129 S.Ct. at 375-76 (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (*per curiam*)). Thus  
24 "[i]n each case, courts 'must balance the competing claims of injury and must consider the effect on  
25 each party of the granting or withholding of the requested relief.'" *Id.* at 376 (citing *Amoco*  
26 *Production Co. v. Gambell*, 480 U.S. 531, 542 (1987)). On an ex parte motion for a TRO, the  
27 moving plaintiff must allege "specific facts in an affidavit or a verified complaint clearly show[ing]  
28

1 that immediate and irreparable injury, loss, or damage will result to the movant before the adverse  
2 party can be heard in opposition.” Fed. R. Civ. Proc. 65(b)(1)(A).

3 Following *Winter*, courts in the Ninth Circuit may apply a sliding scale test when there is a  
4 lesser showing of likelihood of success that amount to “serious questions on the merits” and the  
5 balance of hardships tips strongly in the plaintiff’s favor, as long as the plaintiff satisfies the other  
6 two prongs under *Winter* by showing that there is a likelihood of irreparable injury and that the  
7 injunction is in the public interest. *Alliance For The Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134  
8 (9th Cir. 2011). Because the Court finds that Plaintiff fails to allege a valid claim over which this  
9 Court has jurisdiction, the Court DENIES the application for a TRO.

10 The Court advises Plaintiff that a Handbook for Pro Se Litigants, which contains helpful  
11 information about proceeding without an attorney, is available through the Court’s website or in the  
12 Clerk’s office. The Court also advises Plaintiff that she also may wish to seek assistance from the  
13 Legal Help Center. Plaintiff may call the Legal Help Center at 415-782-8982 or sign up on the 15th  
14 Floor of the San Francisco Courthouse, Room 2796, or on the 4th Floor of the Oakland Courthouse,  
15 Room 470S, for a free appointment with an attorney who may be able to provide basic legal help,  
16 but not legal representation.

17 **IT IS SO ORDERED.**

18  
19 Dated: July 30, 2015

  
JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE

